

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AVATAR REIT I, LLC,

Appellant,

vs.

SPACE SHADOW, LLC, *et al.*

Appellees.

Case No.: 2:24-cv-02374-GMN

**ORDER GRANTING APPELLANT'S
MOTION TO DISMISS**

Pending before the Court is the Motion to Dismiss, (ECF No. 5), filed by Appellant Avatar Reit I, LLC ("Avatar"). Appellee Space Shadow LLC filed a Response, (ECF No. 6). Appellant did not reply. Because the parties agree that the appeal should be dismissed, the Court **GRANTS** Appellant's Motion to Dismiss.

I. BACKGROUND

This case arises from a Chapter 11 bankruptcy proceeding between Avatar and Space Shadow. (*See generally* Mot. Dismiss, ECF No. 5). Appellant appealed the Bankruptcy Court's Order granting Appellee's Motion to Sell the Real Property of the Debtor Free and Clear of Liens ("Sale Order"). (*Id.* 5:4–6). Appellant filed a Notice of Appeal of the Sale Order, and the case was assigned to this Court. (*See* Notice of Appeal, ECF No. 1). The Court ordered Appellant to file its Opening Brief by February 25, 2025. (*See* Minute Order, ECF No. 4). Appellant failed to file its Opening Brief by the deadline. In March 2025, Appellant filed the pending Motion to Dismiss arguing that the appeal is moot and should not proceed. (*See generally* Mot. Dismiss). Appellee does not object to dismissing the appeal but argues that the matter is not moot. (*See generally* Resp., ECF No. 6).

1 **II. LEGAL STANDARD**

2 Federal Bankruptcy Rule 8023 governs voluntary dismissals of bankruptcy appeals.
3 Pursuant to Rule 8023(b), “[a]n appeal may be dismissed on the appellant’s motion on terms
4 agreed to by the parties or fixed by the district court.” Fed. R. Bankr. 8023(b).

5 **III. DISCUSSION**

6 Both parties agree that this bankruptcy appeal should be dismissed but disagree on the
7 grounds for dismissal. Appellant seeks to voluntarily dismiss the appeal arguing that it is moot
8 because there is no longer a sale contemplated between the Debtor and the Buyer. (*See*
9 *generally* Mot. Dismiss). Appellee argues that the appeal is not moot because a sale is still
10 being contemplated and the only obstacle hindering the Debtor from selling the property to the
11 Buyer is this appeal. (Winterton Decl. ¶ 3–5, Ex. 1 to Resp., ECF No. 6-1). Appellee ultimately
12 contends that the appeal is frivolous, and it should be dismissed for Appellant’s failure to
13 prosecute the appeal by failing to file an opening brief by the deadline imposed by the Court.
14 (*See generally* Resp.).

15 The Court does not make a determination on whether the appeal is moot given the
16 limited record available for review and the parties’ conflicting assertions of whether a sale of
17 the property is still contemplated. The Court likewise cannot dismiss the appeal for failure to
18 prosecute because dismissal on these grounds requires the Court to give an appellant notice
19 prior to dismissal. *See generally In re Wright*, 659 F. App’x 438 (9th Cir. 2016) (explaining
20 that the district court properly warned appellant that a failure to file an opening brief on her
21 own behalf would result in dismissal [and] gave her a 30–day extension of time to . . . file her
22 opening brief . . . before dismissing the appeal for failure to prosecute). Accordingly, this
23
24
25

1 appeal is DISMISSED on the grounds that the parties agree that the matter should be
2 dismissed.¹

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Appellant's Motion to Dismiss, (ECF No. 5), is
5 **GRANTED.** The appeal is dismissed on the grounds that both parties agree that the appeal
6 should be dismissed. The Clerk of Court is kindly instructed to close the case.

7 **DATED** this 21 day of April, 2025.

8
9
10 
11 _____
12 Gloria M. Navarro, District Judge
13 UNITED STATES DISTRICT COURT
14
15
16
17
18
19
20
21
22
23
24
25

¹ This Order does not make a determination on whether the appeal was frivolous and does not preclude Appellee from seeking fees and costs by separate motion pursuant to Fed. R. Bankr. P. 8020(a).